Chapter 4: The Three United States

In the previous chapter, a handy matrix was developed to organize the key terms which define the concepts of status and jurisdiction as they apply to federal income taxation. In particular, an alien is any individual who is not a United States** citizen. The term "citizen" has a specific meaning in the regulations which promulgate the Internal Revenue Code (IRC):

> Every person born or naturalized in the United States and subject to its jurisdiction is a citizen.
>
> [26 CFR 1.1-1(c), emphasis added]

What, then, is meant by the term "United States" and what is meant by the phrase "its jurisdiction"? In this regulation, is the term "United States" a singular phrase, a plural phrase, or is it both? The astute reader has already noticed that an important clue is given by regulations which utilize the phrase "its jurisdiction". The term "United States" in this regulation must be a singular phrase, otherwise the regulation would need to utilize the phrase "their jurisdiction" or "their jurisdictions" to be grammatically correct.

As early as the year 1820, the U.S. Supreme Court was beginning to recognize that the term "United States" could designate either the whole, or a particular portion, of the American empire. In a case which is valuable, not only for its relevance to federal taxation but also for its terse and discrete logic, Chief Justice Marshall exercised his characteristic brilliance in the following passage:

> The power, then, to lay and collect duties, imposts, and excises, may be exercised, and must be exercised throughout the United States. Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of states and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States* than Maryland or Pennsylvania ....
>
> [Loughborough vs Blake, 15 U.S. (5 Wheat.) 317]
> [5 L.Ed. 98 (1820), emphasis added]

By 1945, the year of the first nuclear war on planet Earth, the Supreme Court had come to dispute Marshall's singular definition, but most people were too distracted to notice. The high Court confirmed that the term "United States" can and does mean three completely different things, depending on the context:

> The term "United States" may be used in any one of several senses. [1] It may be merely the name of a sovereign* occupying the position analogous to that of other sovereigns in the family of nations. [2] It may designate the territory over which the sovereignty of the United States** extends, or [3] it may be the collective name of the states*** which are united by and under the Constitution.
>
> [Hooven & Allison Co. vs Evatt, 324 U.S. 652 (1945)]
> [brackets, numbers and emphasis added]

This same Court authority is cited by Black's Law Dictionary, Sixth Edition, in its definition of "United States":

> United States. This term has several meanings. [1] It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, [2] it may designate territory over which sovereignty of United States extends, or [3] it may be collective name of the states which are united by and under the Constitution. Hooven & Allison Co. v. Evatt, U.S. Ohio, 324 U.S. 652, 65 S.Ct. 870, 880, 89 L.Ed. 1252.
>
> [brackets, numbers and emphasis added]

In the first sense, the term "United States*" can refer to the nation, or the American empire, as Justice Marshall called it. The "United States*" is one member of the United Nations. When you are traveling overseas, you would go to the U.S.* embassy for help with passports and the like. In this instance, you would come under the jurisdiction of the President, through his agents in the U.S.* State Department, where "U.S.*" refers to the sovereign nation. The Informer summarizes Citizenship in this "United States*" as follows:

> 1. I am a Citizen of the United States* like you are a Citizen of China. Here you have defined yourself as a National from a Nation with regard to another Nation. It is perfectly OK to call yourself a "Citizen of the United

> 1. I am a Citizen of the United States* like you are a Citizen of China. Here you have defined yourself as a National from a Nation with regard to another Nation. It is perfectly OK to call yourself a "Citizen of the United States*." This is what everybody thinks the tax statutes are inferring. But notice the capital "C" in Citizen and where it is placed. Please go back to basic English.
>
> [Which One Are You?, page 11, emphasis added]

Secondly, the term "United States**" can also refer to "the federal zone", which is a separate nation-state over which the Congress has exclusive legislative jurisdiction. (See Appendix Y for a brief history describing how this second meaning evolved.) In this sense, the term "United States**" is a singular phrase. It would be proper, for example, to say, "The United States** is ..." or "Its jurisdiction is ..." and so on. The Informer describes citizenship in this United States** as follows:

> 2. I am a United States** citizen. Here you have defined yourself as a person residing in the District of Columbia, one of its Territories, or Federal enclaves (area within a Union State) or living abroad, which could be in one of the States of the Union or a foreign country. Therefore you are possessed by the entity United States** (Congress) because citizen is small case. Again go back to basic english [sic]. This is the "United States**" the tax statutes are referring to. Unless stated otherwise, such as 26 USC 6103(b)(5).
>
> [Which One Are You?, page 11, emphasis added]

Thirdly, the term "United States***" can refer to the 50 sovereign States which are united under the Constitution for the United States of America. In this third sense, the term "United States***" does not include the federal zone, because the Congress does not have exclusive legislative authority over any of the 50 sovereign States of the Union. In this sense, the term "United States***" is a plural, collective term. It would be proper therefore to say, "These United States***" or "The United States*** are ..." and so on. The Informer completes the trio by describing Citizenship in these "United States***" as follows:

> 3. I am a Citizen of these United States***. Here you have defined yourself as a Citizen of all the 50 States united by and under the Constitution. You are not possessed by the Congress (United States**). In this way you have a national domicile, not a State or United States** domicile and are not subject to any instrumentality or subdivision of corporate governmental entities.
>
> [Which One Are You?, pages 11-12, emphasis added]

Author and scholar Lori Jacques summarizes these three separate governmental jurisdictions in the same sequence, as follows:

> It is noticeable that Possessions of the United States** and sovereign states of the United States*** of America are NOT joined under the title of "United States." The president represents the sovereign United States* in foreign affairs through treaties, Congress represents the sovereign United States** in Territories and Possessions with Rules and Regulations, and the state citizens are the sovereignty of the United States*** united by and under the Constitution .... After becoming familiar with these historical facts, it becomes clear that in the Internal Revenue Code, Section 7701(a)(9), the term "United States**" is defined in the second of these senses as stated by the Supreme Court: it designates the territory over which the sovereignty of the United States** extends.
>
> [A Ticket to Liberty, Nov. 1990, pages 22-23]
> [emphasis added, italics in original]

It is very important to note the careful use of the word "sovereign" by Chief Justice Stone in the Hooven case. Of the three different meanings of "United States" which he articulates, the United States is "sovereign" in only two of those three meanings. This is not a grammatical oversight on the part of Justice Stone. Sovereignty is not a term to be used lightly, or without careful consideration. In fact, it is the foundation for all governmental authority in America, because it is always delegated downwards from the true source of sovereignty, the People themselves. This is the entire basis of our Constitutional Republic. Sovereignty is so very important, an entire chapter of this book is later dedicated to this one subject (see Chapter 11 infra).

The federal zone over which the sovereignty of the United States** extends is the District of Columbia, the territories and possessions belonging to Congress, and a limited amount of land within the States of the Union, called federal "enclaves".

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possessions belonging to Congress, and a limited amount of land within the States of the Union, called federal "enclaves".

The Secretary of the Treasury can only claim exclusive jurisdiction over this federal zone and citizens of this zone. In particular, the federal enclaves within the 50 States can only come under the exclusive jurisdiction of Congress if they consist of land which has been properly "ceded" to Congress by the act of a State Legislature. A good example of a federal enclave is a "ceded" military base. The authority to exercise exclusive legislative jurisdiction over the District of Columbia and the federal enclaves originates in Article 1, Section 8, Clause 17 (1:8:17) of the U.S. Constitution. By virtue of the exclusive authority that is vested in Congress by this clause, Congress shall have the power:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States**, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;
>
> [Constitution for the United States of America]
> [Article 1, Section 8, Clause 17]
> [emphasis added]

The power of Congress to exercise exclusive legislative authority over its territories and possessions, as distinct from the District of Columbia and the federal enclaves, is given by a different authority in the U.S. Constitution. This authority is Article 4, Section 3, Clause 2 (4:3:2), as follows:

> The Congress shall have Power to dispose of and make all needed Rules and Regulations respecting the Territory or other Property belonging to the United States**;
>
> [Constitution for the United States of America]
> [Article 4, Section 3, Clause 2]
> [emphasis added]

Within these areas, it is essential to understand that the Congress is not subject to the same constitutional limitations which restrict its power in the areas of land over which the 50 States exercise their respective sovereign authorities:

> ... [T]he United States** may acquire territory by conquest or by treaty, and may govern it through the exercise of the power of Congress conferred by Section 3 of Article IV of the Constitution .... In exercising this power, Congress is not subject to the same constitutional limitations, as when it is legislating for the United States***. ... And in general the guaranties [sic] of the Constitution, save as they are limitations upon the exercise of executive and legislative power when exerted for or over our insular possessions, extend to them only as Congress, in the exercise of its legislative power over territory belonging to the United States**, has made those guaranties [sic] applicable.
>
> [Hooven & Allison Co. vs Evatt, 324 U.S. 652 (1945)]
> [emphasis added]

In other words, the guarantees of the Constitution extend to the federal zone only as Congress makes those guarantees applicable, either to the territory or to the citizens of that zone, or both. Remember, this is the same Hooven case which officially defined three separate and distinct meanings of the term "United States". The Supreme Court ruled that this case would be the last time it would address official definitions of the term "United States". Therefore, the Hooven case must be judicially noticed by the entire American legal community. See Appendix W for other rulings and for citations to important essays published in the Harvard Law Review on the controversy that surrounds the meaning of "United States" even today. In particular, author Langdell's article "The Status of Our New Territories" is a key historical footing for the three Hooven definitions. To avoid confusion, be careful to note that Langdell arranges the three "United States" in a sequence that is different from that of Hooven:

> Thirdly. -- ... [T]he term "United States" has often been used to designate all territory over which the sovereignty of the United States** extended. [a tautology]
>
> The conclusion, therefore, is that, while the term "United States" has three meanings, only the first and second of these are known to the Constitution; and that is equivalent to saying that the Constitution of the United States*** as such does not extend beyond the limits of the States which are united by and under it, -- a proposition the truth of

> these are known to the Constitution; and that is equivalent to saying that the Constitution of the United States*** as such does not extend beyond the limits of the States which are united by and under it, -- a proposition the truth of which will, it is believed, be placed beyond doubt by an examination of the instances in which the term "United States" is used in the Constitution.
>
> [Langdell, "The Status of Our New Territories"]
> [12 Harvard Law Review 365, 371, emphasis added]

Note carefully that Langdell's third definition and Hooven's second definition both exhibit subtle tautologies, that is, they use the word they are defining in the definitions of the word defined. A careful reading of his article reveals that Langdell's third definition of "United States" actually implies the whole American "empire", namely, the States and the federal zone combined, making it identical to Justice Marshall's definition (see above). Therefore, because it contains a provable tautology, the second Hooven definition is clearly ambiguous too; it can be interpreted in at least two completely different ways: (1) as the federal zone only, or (2) as the 50 States and the federal zone combined (i.e., the whole "empire").

So now, what is "sovereignty" in this context? The definitive solution to this nagging ambiguity is found in the constitutional meaning of the word "exclusive". Strictly speaking, the federal government is "sovereign" over the 50 States only when it exercises one of a very limited set of powers enumerated for it in Article 1, Section 8 of the Constitution. In this sense, the federal government does NOT exercise exclusive jurisdiction inside the 50 States of the Union; it does, however, exercise exclusive jurisdiction inside the federal zone. This exclusive authority originates from 1:8:17 and 4:3:2 in the U.S. Constitution, as quoted above. Now, apply sections 1:8:17 and 4:3:2 to the jurisdictional claims of the Secretary of the Treasury for the "internal" revenue laws, as follows:

> The term "United States**" when used in a geographical sense includes any territory under the sovereignty of the United States**. It includes the states, the District of Columbia, the possessions and territories of the United States**, the territorial waters of the United States**, the air space over the United States**, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States** and over which the United States** has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources.
>
> [26 CFR 1.911-2(g), emphasis added]
> [note the tautology again]

Here's the tautology, in case you missed it:

> "United States" includes any territory under the sovereignty of the United States and over which the United States has exclusive rights.

This is very much like saying:

> A potato is a plant that grows in a potato field.
>
> [Speech of Vice President Dan Quayle]
> [1992 Campaign Spelling Bee]

Notice also the singular form of the phrase "the United States** has ..."; notice also the pivotal term "exclusive rights". When this regulation says that the jurisdiction "includes the States", it cannot mean all the land areas enclosed within the boundaries of the 50 States, because Congress does not have exclusive jurisdiction over the 50 States. Within the 50 States, Congress only has exclusive jurisdiction over the federal enclaves inside the boundaries of the 50 States. These enclaves must have been officially "ceded" to Congress by an explicit act of the State Legislatures involved. Without a clear act of "cession" by one of the State legislatures, the 50 States retain their own exclusive, sovereign jurisdiction inside their borders, and Congress cannot lawfully take any of their own sovereign jurisdiction away from the States. This separation of powers is one of the key reasons why we have a "federal government" as opposed to a "national government"; its powers are limited to the set specifically enumerated for it by the Constitution.

Technically speaking, the 50 States are "foreign countries" with respect to each other and with respect to the federal zone. A key authority on this question is the case of Hanley vs Donoghue, in which the U.S. Supreme Court defined separate bodies of State law as being "foreign" with respect to each other:

> No court is to be charged with the knowledge of foreign laws; but they are well understood to be facts which must, like other facts, be proved before they can be received in a court of justice. [cites omitted] It is equally well settled that the several states of the Union are to be considered as in this respect foreign to each other, and that the courts of one state are not presumed to know, and therefore not bound to take judicial notice of the laws of

> court of justice. [cites omitted] It is equally well settled that the several states of the Union are to be considered as in this respect foreign to each other, and that the courts of one state are not presumed to know, and therefore not bound to take judicial notice of, the laws of another state.
>
> [Hanley vs Donoghue, 116 U.S. 1, 29 L. Ed. 535]
> [6 S.Ct. 242, 244 (1885), emphasis added]

Another key Supreme Court authority on this question is the case of In re Merriam's Estate, 36 NE 505 (1894). Before you get the idea that this meaning of "foreign" is now totally antiquated, consider the current edition of Black's Law Dictionary, Sixth Edition, which defines "foreign state" very clearly, as follows:

> The several United States*** are considered "foreign" to each other except as regards their relations as common members of the Union. ... The term "foreign nations," as used in a statement of the rule that the laws of foreign nations should be proved in a certain manner, should be construed to mean all nations and states other than that in which the action is brought; and hence one state of the Union is foreign to another, in the sense of that rule.
>
> [emphasis added]

And a recent federal statute proves that Congress still refers to the 50 States as "countries". When a State court in Alaska needed a federal judge to handle a case overload, Congress amended Title 28 to make that possible. In its reference to the 50 States, the statute is titled the "Assignment of Judges to courts of the freely associated compact states". Then, Congress refers to these freely associated compact states as "countries":

> (b) The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the countries referred to in subsection (a) .... [!!!]
>
> [28 U.S.C. 297, 11/19/88, emphasis added]

Indeed, international law is divided roughly into two groups: (1) public international law and (2) private international law. As it turns out, citizenship is a term of private international law (also known as municipal law) in which the terms "state", "nation" and "country" are all synonymous:

> Private international law assumes a more important aspect in the United States than elsewhere, for the reason that the several states, although united under the same sovereign authority and governed by the same laws for all national purposes embraced by the Federal Constitution, are otherwise, at least so far as private international law is concerned, in the same relation as foreign countries. The great majority of questions of private international law are therefore subject to the same rules when they arise between two states of the Union as when they arise between two foreign countries, and in the ensuing pages the words "state," "nation," and "country" are used synonymously and interchangeably, there being no intention to distinguish between the several states of the Union and foreign countries by the use of varying terminology.
>
> [16 Am Jur 2d, Conflict of Laws, Sec. 2, emphasis added]

This foreign relationship between the 50 States and the federal zone is also recognized in the definition of a "foreign country" that is found in the Instructions for Form 2555, entitled "Foreign Earned Income", as follows:

> Foreign Country. A foreign country is any territory (including the air space, territorial waters, seabed, and subsoil) under the sovereignty of a government other than the United States**. It does not include U.S.** possessions or territories.
>
> [Instructions for Form 2555: Foreign Earned Income]
> [Department of the Treasury, Internal Revenue Service]
> [emphasis added]

Notice that a "foreign country" does NOT include U.S.** possessions or territories. U.S.** possessions and territories are not "foreign" with respect to the federal zone; they are "domestic" with respect to the federal zone because they are inside the federal zone. This relationship is also confirmed by the Treasury Secretary's official definition of a "foreign country" that is published in

Notice that a "foreign country" does NOT include U.S.** possessions or territories. U.S.** possessions and territories are not "foreign" with respect to the federal zone; they are "domestic" with respect to the federal zone because they are inside the federal zone. This relationship is also confirmed by the Treasury Secretary's official definition of a "foreign country" that is published in the Code of Federal Regulations:

> The term "foreign country" when used in a geographical sense includes any territory under the sovereignty of a government other than that of the United States**. It includes the territorial waters of the foreign country (determined in accordance with the laws of the United States**), the air space over the foreign country, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources.
>
> [26 CFR 1.911-2(h), emphasis added]
> [note the subtle tautology again]

If this regulation were to be interpreted any other way, except that which is permitted by the U.S. Constitution, then the sovereign jurisdiction of the federal government would stand in direct opposition to the sovereign jurisdiction of the 50 States of the Union. In other words, such an interpretation would be reduced to absurd consequences (in Latin, reductio ad absurdum). Sovereignty is the key. It is indivisible. There cannot be two sovereign governmental authorities over any one area of land. Sovereignty is the authority to which there is politically no superior. Sovereignty is vested in one or the other sovereign entity, such as a governmental body or a natural born Person (like you and me).

> This issue of jurisdiction as it relates to Sovereignty is a major key to understanding our system under our Constitution.
>
> [The Omnibus, Addendum II, page 11]

In reviewing numerous acts of Congress, author and scholar Lori Jacques has come to the inescapable conclusion that there are at least two classes of citizenship in America: one for persons born outside the territorial jurisdiction of the United States**, and one for persons born inside the territorial jurisdiction of the United States**. This territorial jurisdiction is the area of land over which the United States** is sovereign and over which it exercises exclusive legislative jurisdiction, as stated in the Hooven case and the many others which have preceded it, and followed it:

> When reading the various acts of Congress which had declared various people to be "citizens of the United States", it is immediately apparent that many are simply declared "citizens of the United States***" while others are declared to be "citizens of the United States**, subject to the jurisdiction of the United States**." The difference is that the first class of citizen arises when that person is born out of the territorial jurisdiction of the United States** Government. 3A Am Jur 1420, Aliens and Citizens, explains: "A Person is born subject to the jurisdiction of the United States**, for purposes of acquiring citizenship at birth, if his birth occurs in territory over which the United States** is sovereign ..." [!!]
>
> [A Ticket to Liberty, Nov. 1990, page 32]
> [emphasis added]

The above quotation from American Jurisprudence is a key that has definitive importance in the context of sovereignty (see discussion of "The Key" in Appendix P). Note the pivotal word "sovereign", which controls the entire meaning of this passage. A person is born "subject to its jurisdiction", as opposed to "their jurisdictions", if his birth occurs in territory over which the "United States**" is sovereign. Therefore, a person is born subject to the jurisdiction of the "United States**" if his birth occurs inside the federal zone. Conversely, a natural born person is born a Sovereign if his birth occurs outside the federal zone and inside the 50 States. This is jus soli, the law of the soil, whereby citizenship is usually determined by laws governing the soil on which one is born.

Sovereignty is a principle that is so important and fundamental, a subsequent chapter of this book is dedicated entirely to discussing its separate implications for political authorities and for sovereign individuals. It is also important to keep the concept of sovereignty uppermost in your thoughts, where it belongs, as we begin our descent into the dense jungle called statutory construction. (This is your Captain speaking.) So, fasten your seat belts. The Hooven decision sets the stage for a critical examination of key definitions that are found in the IRC itself.

One of the many statutory definitions of the term "United States" is found in chapter 79 of the IRC, where the definitions are located:

One of the many statutory definitions of the term "United States" is found in chapter 79 of the IRC, where the definitions are located:

> When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-- ...
>
> (9) United States. -- The term "United States" when used in a geographical sense includes only the States and the District of Columbia.
>
> [http://www.law.cornell.edu/uscode/26/7701.html">IRC 7701(a)(9)]
> [emphasis added]

Setting aside for the moment the intended meaning of the phrase "in a geographical sense", it is obvious that the District of Columbia and the "States" are essential components in the IRC definition of the "United States". There is no debate about the meaning of "the District of Columbia", but what are "the States"? The same question can be asked about a different definition of "United States" that is found in another section of the IRC:

> For purposes of this chapter --
>
> (2) United States. -- The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
>
> [IRC 3306(j)(2), emphasis added]

Again, there is no apparent debate about the meanings of the terms "the Commonwealth of Puerto Rico" and "the Virgin Islands". But what are "the States"? Are they the 50 States of the Union? Are they the federal states which together constitute the federal zone? Determining the correct meaning of "the States" is therefore pivotal to understanding the statutory definition of "United States" in the Internal Revenue Code. The next chapter explores this question in some detail.

In addition to keeping sovereignty uppermost in your thoughts, keep your eyes fixed on the broad expanse of the dense jungle you are about to enter. This jungle was planted and watered by a political body with a dual, or split personality. On the one hand, Congress is empowered to enact public laws for the 50 States, subject to certain written restrictions. On the other hand, it is also empowered to enact "municipal" statutes for the federal zone, subject to a different set of restrictions. Therefore, think of Congress as "City Hall" for the federal zone. In 1820, Justice Marshall described it this way:

> ... [Counsel] has contended, that Congress must be considered in two distinct characters. In one character as legislating for the states; in the other, as a local legislature for the district [of Columbia]. In the latter character, it is admitted, the power of levying direct taxes may be exercised; but, it is contended, for district purposes only, in like manner as the legislature of a state may tax the people of a state for state purposes. Without inquiring at present into the soundness of this distinction, its possible influence on the application in this district of the first article of the constitution, and of several of the amendments, may not be altogether unworthy of consideration.
>
> [Loughborough vs Blake, 15 U.S. (5 Wheat.) 317]
> [5 L.Ed. 98 (1820), emphasis added]

The problem thus becomes one of deciding which of these "two distinct characters" is doing the talking. The language used to express the meaning of "States" in the IRC is arguably the best place to undertake a careful diagnosis of this split personality. (Therapy comes later.)